



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

[No. 18-12]

**Donald Kenneth Shreves, D.V.M.
Dismissal of Proceeding**

On October 31, 2017, the Acting Assistant Administrator, Diversion Control Division, issued an Order to Show Cause to Donald Kenneth Shreves, D.V.M. (Respondent), of Pottstown, Pennsylvania. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration on the ground that he does "not have authority to handle controlled substances in the State of Pennsylvania, the [S]tate in which [he is] registered with the" Agency. Show Cause Order, at 1.

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Respondent is registered "as a practitioner in [s]chedules II-V under . . . registration number BS5342934," at the location of "1361C Farmington Ave., Pottstown, Pennsylvania." *Id.* The Order further alleged that Respondent's registration was due to expire on February 28, 2018. *Id.*

As the substantive ground for the proceeding, the Show Cause Order alleged that on September 28, 2017, the Pennsylvania Board of Veterinary Medicine "issued an Order of Temporary Suspension" of his veterinary medicine license. *Id.* at 1-2. The Order alleged that as a consequence of the Board's action, Respondent is currently "without to handle controlled substances in . . . Pennsylvania, the [S]tate in which" he is registered, and therefore, his registration should be revoked. *Id.* at 2.

The Show Cause Order notified Respondent of his right to request a hearing or to submit a written statement while waiving his right to a hearing, the procedure for electing either option,

and the consequence of failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The Order also notified Respondent of his right to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. § 824(c)(2)(C)).

On November 8, 2017, Respondent was personally served with the Show Cause Order, and on December 8, 2018, Respondent requested a hearing. Resp. Hrng. Req. at 1. The matter was placed on the docket of the Office of Administrative Law Judges and assigned to ALJ Charles Wm. Dorman, who, on December 11, 2017, issued an order setting the briefing schedule. *See* Briefing Schedule for Lack of State Authority Allegations, at 1.

On January 4, 2018, the Government submitted a Motion for Summary Disposition; as support for its motion, the Government attached a copy of the Board's Suspension Order and a Declaration of a DEA Task Force Office that Respondent's Veterinary License remained suspended as of January 2, 2017, when she queried the Board's website. Mot. for Summ. Disp., Attachments 3; 5; 6, at 2. On January 10, 2018, Respondent filed his reply and admitted that he was currently without authority to handle controlled substances in Pennsylvania. Resp.'s Reply to Govt. Mot. for Summ. Disp., at 1.

On January 11, 2018, the ALJ issued his Recommended Decision (R.D.). Therein, the ALJ found that there was no dispute over the material fact that Respondent lacks authority to dispense controlled substances in Pennsylvania. *Id.* at 5-6. The ALJ thus granted the Government's Motion for Summary Disposition and recommended that Respondent's registration be revoked. *Id.*

Neither party filed exceptions to the Recommended Decision. On February 6, 2018, the ALJ forwarded the record to my Office.

Having reviewed the record, I hold that this proceeding is now moot. The evidence in the record establishes that Respondent's registration was due to expire on February 28, 2018, and according to the Agency's registration record for Respondent of which I take official notice,¹ he has not submitted an application to renew his registration. Accordingly, I find that Respondent's registration expired on February 28, 2018 and that there is no application to act upon.

DEA has long held that "if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." *Donald Brooks Reece II, M.D.*, 77 FR 35054, 35055 (2012) (quoting *Ronald J. Riegel*, 63 FR 67312, 67133 (1998)); *see also Thomas E. Mitchell*, 76 FR 20032, 20033 (2011). "Moreover, in the absence of an application (whether timely filed or not), there is nothing to act upon." *Reece*, 77 FR at 35055. Accordingly, because Respondent has allowed his registration to expire and did not file an application to renew his registration or for any other registration in Pennsylvania, this case is now moot and will be dismissed.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Donald K. Shreves, D.V.M., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: May 7, 2018.

Robert W. Patterson,
Acting Administrator.

¹ Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is "entitled on timely request to an opportunity to show to the contrary." 5 U.S.C. § 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within fifteen calendar days of service of this order which shall commence on the date this order is mailed.

